

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

EAGLE GUARD SERVICES

Employer

and

Cases 21-UC-405
21-RC-20408

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, WAREHOUSE
LOCAL 26, AFL-CIO

Petitioner-Union

and

INTERNATIONAL UNION OF SECURITY OFFICERS

Intervenor-Union

DECISION, ORDER
AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(b) and (c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. International Longshore and Warehouse Union, Warehouse Local 26, AFL-CIO, (Local 26), is a labor organization within the meaning of Section 2(5) of the Act.

4. International Union of Security Officers, (IUSO), is a labor organization within the meaning of Section 2(5) of the Act.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and regular part-time equipment allocators employed by the Employer at its 614 Terminal Way, Terminal Island, California facility; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined by the Act.

The Employer, on November 26, 2001, filed a petition in Case 21-UC-405 seeking to clarify an existing collective-bargaining unit represented by IUSO to include: all Security Officers and Guards, including Equipment Allocators, employed by Eagle Guard Service, Inc. working in

the states of California, Oregon and Washington; and excluding all office clerical employees, confidential employees and supervisors as defined by the Act¹.

On November 8, 2001, the Petitioner filed a petition in Case 21-RC-20408 seeking to represent a unit of all full-time and regular part-time allocators at the Employer's Terminal Island, California, location.

Case 21-UC-405

The IUSO, since about 1984, has been voluntarily recognized by the Employer as the representative of all security officers and guards² in its employ in the states of California, Washington and Oregon. The equipment allocator position at issue was created by the Employer in about July 1997. All of the equipment allocators employed by the Employer work at a marine freight facility located at 614 Terminal Way, Terminal Island, California (the facility)³.

¹ The Employer, on December 5, 2001, after the close of the hearing, submitted an amended unit description. The above language reflects that contained within the amendment. IUSO and the Employer advanced essentially identical positions at a hearing held on December 3, 2001, regarding the above-captioned cases. IUSO sought and was allowed by the Hearing Officer to intervene and participate in the December 3rd hearing apparently on the basis of its contractual relationship with the Employer in Case 21-UC-405 IUSO did not submit a post-hearing brief.

² The terms "security officer" and "guard" are used interchangeably in this document.

³ The facility is operated by APL Limited. The Employer provides security and other services at the terminal under contract with APL Limited. APL Limited is not a party to, and has not sought to intervene in, either of the above-captioned cases.

Subsequent to the creation of the equipment allocator position, the Employer and IUSO negotiated and agreed to terms on a collective-bargaining agreement, effective from December 2, 1997 to December 1, 2001, covering all security officers and guards employed by the Employer in California, Oregon and Washington⁴. The contract makes no reference to equipment allocators or any other non-guard positions. Although the position has been in existence since about July 1997, the IUSO did not seek to represent the Employer's equipment allocators for collective-bargaining purposes until about December 3, 2001, a date after Local 26 filed its representation petition in Case 21-RC-20408.

The Board's express authority under Section 9(c)(1) of the Act to issue certifications includes the implied authority to police such certifications and to clarify them as a means of effectuating the policies of the Act. Thus, Section 102.60(b) of the Board's Rules and Regulations, Series 8, provides that a party may file a petition for clarification of a bargaining unit where there is a certified or currently recognized bargaining representative and no question concerning representation exists.

⁴ The IUSO and Employer have purportedly come to terms on a new contract. However, a written copy of the contract did not exist at the time of the hearing and no such document was entered into evidence by any party.

The Board described the purpose of unit clarification proceedings in Union Electric Co., 217 NLRB 666, 667 (1975):

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category-excluded or included-that they occupied in the past. ***Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning unit placement of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent. (Italics added).***

As stated in Robert Wood Johnson University Hospital, 328 NLRB 912, 914 (1999), quoting United Parcel Service, 303 NLRB 326, 327 (1991), enfd. Teamsters National UPS Negotiating Committee v. NLRB, 17 F. 3d 1518 (D.C. Cir. 1994):

The limitations on accretion discussed above and applied in *Laconia Shoe* require neither that the union have acquiesced in the historical exclusion of a group of employees from an existing unit, nor that the excluded group have some common job-related characteristic distinct from unit employees. ***It is the fact of historical exclusion that is determinative. (Italics in original).***

A petition seeking to exclude a classification that historically has been excluded raises a question of representation, which can only be resolved through an

election, or based on majority status. Boston Cutting Die Co., 258 NLRB 771 (1981). Similarly, when the employees have not been included in the unit for some time and the union has made no attempt to include the position in the unit, the Board may find that the position is historically outside the unit, and that the union has waived its right to a unit clarification proceeding. Sunar Hauserman, 273 NLRB 1176 (1984); Plough, Inc., 203 NLRB 818 (1973). Accord: ATS Acquisition Corp., 321 NLRB 712 (1996).

Applying these principles in the circumstances of this case, I find that the equipment allocator position at issue does not fall within any newly established classifications of disputed unit placement or within existing classifications which have undergone recent, substantial changes in duties and responsibilities. Rather, the record demonstrates that the allocator position has been excluded from the existing bargaining unit represented by the IUSO since at least the 1997 contract, and that there have been no recent, substantial changes regarding the position that warrant processing this petition.

The record reveals that the IUSO and the Employer never intended equipment allocators to be covered by the contract or otherwise represented by the IUSO. The record shows that the equipment allocator position was created in July 1997 and that the IUSO and the Employer subsequently

negotiated and became parties to a contract covering all "Security Officers and Guards employed by Eagle Guard Services, Inc. working in the state of California, Oregon and Washington."

Although effective approximately 6 months after the creation of the equipment allocator position, the contract contains no reference to equipment allocators and it does not otherwise purport to cover individuals holding such positions. Additionally, the record does not show that equipment allocators have ever been subjected to the terms and conditions of the contract by either the Employer or the IUSO, including the requirement that they join and maintain membership in the IUSO in order to retain their positions.

Thus, the record establishes that since its inception in July 1997, the equipment allocator position has been excluded by the IUSO and the Employer from coverage under the contract. As a result of its historical exclusion from the unit of "Security Officers and Guards," the equipment allocator position cannot be accreted to the existing unit via a unit clarification petition. Accordingly, the petition is dismissed.

ORDER

IT IS HEREBY ORDERED that the petition filed in Case 21-UC-405 be, and hereby is, dismissed.

Case 21-RC-20408

Petitioner (Local 26) seeks to represent a unit limited to all full and regular part time equipment allocators employed by the Employer at its Terminal Island, California facility. Local 26 submits that the equipment allocators are not guards under Section 9(b)(3) of the Act and, as a result, it can be certified to represent the non-guard equipment allocator unit. The Employer and the IUSO contend that the equipment allocators are guards under the Act and, as Local 26 is a non-guard union, it cannot be certified to represent a guard unit.

The Employer employs approximately 9 equipment allocators, 70 security guards and 6 bus drivers⁵ at a marine freight facility, operated by APL Limited, in Terminal Island, California. The employees, including the equipment allocators, work a day, swing or night shift. However, the equipment allocators begin and end their shifts approximately 1 hour prior to the guards' shift start and end times.

The record shows that equipment allocators work in one of two booths located in the container yard and the marine yard at the terminal. Each booth contains computer

⁵ The Petitioner Union does not seek to represent the bus drivers, and no party contends that they should be included in the unit under consideration in the RC case. While the contract between the Employer and the IUSO does not mention the drivers, the Employer's security accounts manager testified that they are "bargaining agreement personnel."

equipment and paper logs used for the distribution and tracking of two-way radios and vehicle keys, owned by the terminal operator APL Limited, to longshoremen working at the facility and security guards employed by the Employer and working at the terminal⁶. Also in the booth is radio battery recharging equipment.

Adjacent to each booth is an area where vehicles (whose keys are secured in the booth) are parked when they are not issued out. The record shows that these parking areas are not fenced or physically connected to the secure booth area. The record further shows that the allocator booths are locked at all times and the only individuals with keys are the allocators working in the booths, the Employer's security accounts manager, and the security guard shift supervisor for a given shift.

The record reveals that allocators wear a uniform consisting of a blue polo shirt having a badge-shape symbol with an eagle's head and the words "Eagle Guard Services" on the left chest area. Additionally, the allocator uniform consists of khaki pants and a yellow rain slicker, with no Employer logo or other writing or symbols on it, for use in inclement weather. The record further reveals that the allocator uniform is optional for wear on Fridays, Saturdays

⁶ The record shows that the total value of all radios and vehicles contained in and around the two allocator's booths is approximately \$2,100,000.

and Sundays, and the uniform pants may be substituted with employee-supplied khaki pants. The record does not indicate that allocators are issued or required to wear headgear as part of their uniform.

As set forth in the record, allocator job duties and procedures are set forth in a written document entitled "Equipment Allocator Rules and Procedures." This document is part of a larger document entitled "Post Orders." The Post Orders are grouped in a binder and contain, in addition to the allocator job description, separate job descriptions and procedures for the various security guard positions, such as rover, traffic officer and dock-rail security guard⁷. The binder also contains a written job description and procedures for bus drivers employed by the Employer at the facility.

The record shows that allocators are not given access to written job descriptions other than that for the equipment allocator position because they are not required to know or perform job duties or rules outside of those set forth for equipment allocators. Additionally, the record reveals that, in the event of staffing shortages, the

⁷ These positions are not intended as an all-inclusive list of the Employer's guard positions. Rather, these positions were specifically identified by Security Accounts Manager Reuben Rice as having detailed written descriptions contained within the above-mentioned binder. No security guard written job descriptions were introduced as evidence at the hearing.

allocators do not perform the job duties of guards and guards do not perform the job duties of allocators.

The record reveals that the purpose of the equipment allocator position is to issue vehicles and radios to work groups, assist in meeting the changing equipment needs of the work groups, maintain accurate chronological equipment inventories and allocation records, record and report missing, unreturned, damaged, lost or stolen equipment to management, inspect and maintain equipment to ensure it is in serviceable condition, and make every effort to exchange malfunctioning equipment.

The record shows that, in order to effectuate the above-mentioned functions of the equipment allocator position, allocators are required to maintain detailed logs regarding equipment allocation status. The record indicates that these logs are initially created or updated in paper format and then are later entered into a computer database by the allocators. The logs required to be kept by the allocators are the security equipment out/in register, longshore out/in register⁸, outstanding equipment log and an end-of-shift checklist. The record reveals that the security and longshore in/out registers require that the allocators, at the beginning of their shift, verify that all

⁸ The record indicates that the allocators issue the same equipment (vehicles and radios) to both guards and longshoremen.

equipment listed in the "in" section of the log is present and that all "out" equipment are properly listed as such.

The record indicates that the allocators issue equipment to guards and longshoremen upon receipt of a properly filled-out "yard key card." The yard key card contains areas regarding the date, equipment to be issued and the name and work number of the person to whom the equipment will be issued. The record indicates that allocators are required to verify that the information on the key card is correct before issuing equipment. The record indicates that, as the same individuals receive the same equipment each time they work, the allocators are not formally required to check the photo identification of all individuals issued equipment.

In regards to the vehicles, allocators are responsible for maintaining an accurate inventory of all vehicle keys. Allocators are not responsible for the actual vehicles.

The record shows that the allocators must enter all equipment that was checked out, but not checked in, in the equipment outstanding log. This log is then transmitted to department managers and the Security Manager.

In regards to missing equipment, the allocators are required to investigate and follow up on the equipment by reporting it missing to management in a timely manner,

asking the employee or the employee's supervisor about the missing equipment, checking vehicles located near the booth for missing radios, and requesting management to conduct a search of the employee's work area and/or the terminal area. The record indicates that the allocators do not have any set procedures for investigating and recovering equipment; rather, the above-mentioned actions, with the exception of reporting the missing equipment to management, are suggestions on how to locate equipment. The record further indicates that allocators do not conduct any actual searches of persons or property, except to look in vehicles parked near the booth for lost radios. If missing equipment cannot be located, it is recorded in a missing equipment log⁹.

The record reveals that allocators are not allowed to leave their booth, with the exception of short breaks to step outside to smoke or get fresh air, during work hours. In addition, allocators are prohibited from allowing others entry to the booth, and are required to disperse loiterers from in and around the booth, including security guards employed by the Employer. The record indicates that time clocks used by the guards are located inside the booths, but that guards only enter the booths briefly to clock in and out.

⁹ Missing vehicles are kept on the outstanding equipment report and are not listed on the missing equipment log.

The record indicates that the Employer does not require allocators to hold a "guard card" issued by the State of California in order to gain or retain employment as an equipment allocator. Additionally, the record indicates that allocators receive on-the-job training by shadowing an experienced allocator until they are competent in the allocator job duties. The Employer does not provide or require any formal training for equipment allocators.

The primary functions of security guards employed by the Employer at the facility are to control access to the facility and points contained therein, patrol the terminal area and report any suspicious activity and security breaches to management of the Employer and terminal operator. Guards at the facility perform a variety of fixed and mobile security functions, including roaming patrols, perimeter inspection, document and identification verification, granting access and directing the movements of truck drivers and reporting facility speed limit violators to management. The record shows that guards are not permitted to carry weapons or use force in the course of their duties.

Guard positions, unlike the allocator position, are subdivided into different categories based on the location of the patrol area and the duties unique to each area. For example, some guards conduct roving patrols with

general security duties, other guards patrol fixed areas such as the main gate, bridge area, cross walk or trouble window¹⁰ where they control access to and within the facility and also check the identification and documents of trucks, drivers and containerized cargo.

In addition to the above-mentioned categories, as revealed by the record, guards employed by the Employer at the facility hold the rank of security officer, corporal, sergeant or lieutenant. The record does not indicate that equipment allocators are eligible to hold any such rank.

The record shows that all guards employed by the Employer at the facility are required to wear a uniform consisting of a tan shirt with epaulets, an American flag on the left shoulder and a patch on the right shoulder containing a badge with an eagle's head and the words "Eagle Guard Services Private Security." The record shows that the guard uniform also consists of a brown cap with the words "Eagle Guard Service" and brown pants with a tan stripe down the outside legs. The guards are further issued an unmarked yellow rain slicker (the same as issued to allocators) for use in inclement weather. The record does not indicate that guards are allowed to substitute their own apparel for

¹⁰ The record indicates that the trouble window is an area where drivers who are lost or have improper documents go to receive assistance. The trouble window is manned by a guard employed by the Employer.

uniform items, or that wearing the uniform is optional on Fridays and weekends.

The record indicates that the Employer requires guards to pass a background check and possess a California "guard card" as a condition of being hired and for retaining their positions¹¹. In addition, guards are required to pass a test regarding the duties and rules of the various guard positions and receive on-the-job-training from experienced guard personnel.

Section 9(b)(3) of the Act defines a guard as "any individual employed...to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." Section 9(b)(3) of the Act prohibits certification of a labor organization as the bargaining representative of a unit of guards if the organization "admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

Employees that are responsible for protecting the property of the employer or customers are deemed guards under the Act. Wells Fargo Alarm Services, 289 NLRB 562 (1988). However, not every employee whose job duties require, in some sense, the protection or safeguarding of

¹¹ The record indicates that an individual must complete State mandated training prior to being issued a guard card.

property is a statutory guard. To this end, the Board has limited the granting of guard status only to employees whose job duties "encompass the security-type functions generally associated with guards." BPS Guard Services, Inc., 300 NLRB 298, 300 (1990). Employees having basic job duties that do not involve the direct and significant protection of property, but whose duties only encompass guard-like activities, are not considered guards within the meaning of the Act. Tac/Temps and the Philadelphia Bottling Co., 314 NLRB 1142, 1143 (1994); see also Purolator Courier Corp., 300 NLRB 812 (1990).

In Tac/Temps, the Board found that checkers employed to count products on trucks coming into and out of the employer's facility, and maintaining accurate records of such counts, were not guards under the Act. The Board's ruling was supported by the fact that the employer employed separate and distinct security guards at the facility, and also by the fact that the checkers were not responsible for investigating, resolving or preventing product loss or enforcing rules against such. Rather, the checkers merely reported any discrepancies or inconsistencies uncovered during their counts. Supra at 1144.

In the instant case, similar to the checkers in Tac/Temps, the allocators' primary job functions do not involve enforcing rules against loss or theft of property.

Rather, the allocators only perform guard-like functions, such as checking identification and restricting access to the booth, as an incidental part of their primary job duties of distributing radios and truck keys and maintaining detailed records regarding such equipment. Where loss or theft is detected, an allocator is required to report the missing equipment to management. If an allocator suspects employee theft, he is not able to independently investigate the matter, outside of a search of vehicles immediately adjacent to the booth for missing radios, or search the employee or his work area. Although the allocator may request a search, authorization for searches issues from management and is undertaken by security personnel.

Also similar to Tac/Temp, the Employer employs a security guard force that is entirely separate and distinct from the allocators. As set forth in the record, allocators and security guards are not allowed to perform the others' job duties. This is, in part, due to the fact that guards perform duties that the Employer does not require allocators to have knowledge of, and partially due to the fact that guards, unlike the allocators, are required to undertake specialized training and possess a State-issued "guard card." Additionally, guards are prohibited from entering allocator booths except to clock in and out. Conversely, allocators are restricted from leaving the booth, except for

very brief periods spent immediately outside the booth, and are tasked with keeping security guards from loitering in or around the booth.

That the Employer's guards are separate and distinct from the allocators is further revealed by the fact that, except for the shift supervisor, guards do not possess keys to the booths and allocators do not possess keys to any part of the facility other than the booth in which they are working. Additionally, guards wear a traditional law-enforcement type uniform, one that makes them easily recognizable as performing peacekeeping or law-enforcement type job duties; while allocators wear a blue polo shirt and khaki pants. The guards are also given rank similar to those given soldiers or police officers (corporal, sergeant, and lieutenant), while the allocators are not. In addition, the record shows that allocators are not required to wear their uniforms on Friday, Saturday and Sunday; no such exception exists for guards.

Although guards employed by the Employer maintain written records, such activities do not confer guard status on the allocators. The record indicates that guards typically prepare or maintain hourly logs of their activities, lists of drivers coming into and about the facility, and incident reports. However, these reports are incidental to the guards' main duties of controlling access

to the facility and points contained therein, patrolling the terminal area and reporting any suspicious activity and security breeches to management.

In contrast, the primary job function of an allocator is to issue equipment and track the allocation of equipment via written and computerized logs. Where theft or loss is suspected, an allocator is required to report it to management; he may not independently conduct a search for the property, outside of the vehicles in the immediate vicinity of the booth area, and is not allowed to search people or other property for missing equipment. In such an instance, the search would be conducted by the Employer's security guards.

The Employer, in its brief, relies on Allen Services Co., 314 NLRB 1060 (1994); Brinks, Inc., 272 NLEB 868 (1985); and Thunderbird Hotel, 144 NLRB 84 (1963), in support of its contention that the allocators perform guard job functions and, as a result, are guards under the Act. For the reasons discussed below, the Employer's reliance on these cases is misplaced.

In Allen Services Co., the Board found the employer's security personnel to be guards under the Act where the employees were tasked with ensuring that no one gained access to the premises and trains kept thereon, or vandalized the property. The Board reached this conclusion

even though the employees had no special guard training, did not wear uniforms, did not carry weapons and were required to contact the police to apprehend intruders.

Unlike the employees at issue in Allen Services, the allocators in the instant case are not primarily tasked with performing traditional guard job duties of enforcing rules to protect the property of the Employer or its customers. Section 9(b)(3) of the Act. The allocators are primarily tasked with allocating equipment and keeping detailed records of all such transactions. Although the allocators perform security-type functions such as limiting access to the booths and conducting limited investigations of missing equipment, such duties are incidental to their main duties of issuing and tracking equipment. See Tac/Temps, 314 NLRB at 1143.

In Brink's, another case cited by the Employer in support of its position, the Board found employees who wrapped and inventoried coins to be guards where such employees were also tasked with protecting the coins and controlling access to the coin room. In contrast to the coin room employees in Brink's, the allocators are not primarily tasked with protecting property or restricting access to the booths. Rather, such activities are incidental to the allocators' primary function of issuing and tracking equipment. The limited access to the booth in

the instant case stems from the physical security measures placed in the booth, and not as a result of any primary guard job function performed by the allocators. The allocator job description indicates that the allocators are responsible for maintaining accurate records of all equipment, including that listed as missing, lost or stolen. The allocators are not, unlike the employees at issue in Brink's, directly accountable for losses occurring within the secure area, and are not subject to reprimand for the actual loss of radios or trucks.

In Thunderbird Hotel, the Board found that timekeepers employed by the employer were guards under the Act, where the timekeepers were primarily responsible for ensuring that employees properly clocked in and out, prohibiting unauthorized access to the property, and ensuring that property was not brought in or removed without authority. In the instant case, the allocators, unlike the timekeepers in Thunderbird Hotel, are not tasked with ensuring that employees properly clock in and out. Although the record indicates that the guards' timeclocks are in the allocator booths, neither the record as a whole, nor the allocators' job description show that allocators monitor guards when they clock in and out to ensure that they are adhering to their work schedules. There is also no indicia

that allocators are responsible for guards who use the timeclocks in an improper or dishonest manner.

Also, unlike the timekeepers in Thunderbird Hotel, the allocators are not required to keep unauthorized persons from entering the facility or ensuring that property is not brought in or removed without authorization. The record in the instant case reveals that the guards, and not the allocators, are responsible for conducting fixed and roving patrols of the facility to guard against unauthorized access.

In addition, allocators are not primarily tasked with enforcing rules regarding bringing in or removing equipment from the facility. Although the allocators are required to receive a properly completed "yard key card" before issuing equipment, the record does not indicate that the allocators are responsible for ensuring that the equipment, once issued, is used in and around the facility in an authorized manner. The record does not indicate that the allocators are required to adhere to set rules or procedures for verifying that equipment is issued only to authorized personnel. In fact, the record indicates that allocators do not regularly verify identification because they repeatedly issue the same equipment to the same employees. Any verification of identification in regard to

issuance of equipment is attendant to the allocators' primary job duties.

Overall, the record shows that the allocators are not primarily tasked with enforcing rules or protecting property. Rather, allocators primarily distribute, equipment and keep detailed records of the equipment. Any security-type functions undertaken by the allocators are incidental to their primary job duties, the value of the equipment they distribute and the security measures in place in their work areas. Based on the noted considerations and the record as a whole, it is concluded that the equipment allocators are not guards as defined by the Act. The record does not support the IUSO's and Employer's assertion that the equipment allocators are guards under Section 9(b)(3) of the Act¹².

At the hearing, the parties refused to stipulate that the petitioned-for unit in Case 21-RC-20408 is an appropriate unit for collective-bargaining purposes. Other than the above-noted rejected contention that the allocators are guards, no party has submitted any argument regarding the appropriateness of the petitioned-for unit. Based on the record as a whole, I find that the unit of allocators is an appropriate unit for the purposes of collective

¹² Since it is concluded that the equipment allocators are not guards as defined in the Act, it is not necessary to address the Employer's

bargaining. I shall, therefore, direct an election in the appropriate unit.

There are approximately nine employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Boards Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who have retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before

contention that the petition should be dismissed because Local 26 may

the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **International Longshore and Warehouse Union, Warehouse Local 26, AFL-CIO.**¹³

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them.

Excelsior Underwear Inc., 156 NLRB 1236; NLRB v. Wyman-Gordon Co., 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list containing the full names and addresses of all the eligible voters shall be timely filed with the undersigned who shall make this list available to all parties to the election. In order to be timely filed, the list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017 on or before January 18, 2002. No

not represent both guards and non-guards.

¹³ Since the IUSO is a guard union, they may not represent a unit of non-guard employees. Moreover, the IUSO intervened only in Case 21-UC-405 because it is a party to the contract considered therein. Accordingly,

extension of time to file this list may be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATION

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

they are not a party to the proceeding in Case 21-RC-20408, and they

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EDT, on January 25, 2002.

DATED at Los Angeles, California, this 11th day of January 2002.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

385-7533-2020
400-2575-2800

will not appear on the instant ballot.